

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0243UT**

**Use Tax  
For Year 1996**

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**ISSUES**

**I. Use Tax – Imposition**

**Authority:** Ind. Code § 6-2.5-3-2;  
Ind. Code § 6-2.5-5-9;  
Faris Mailing, Inc. v. Indiana Department of State Revenue, 512 N.E.2d 480 (Ind. Tax Ct. 1987);  
Indianapolis Fruit Co., v. Department of State Revenue, 691 N.E.2d 1379 (Ind. Tax Ct. 1998).

The taxpayer protests the tax assessed on purchases of wrapping and packaging materials.

**II. Use Tax – Imposition**

**Authority:** Ind. Code § 6-2.5-1-1;  
Ind. Code § 6-2.5-3-3.

The taxpayer protests the tax assessed on electrical work performed for the taxpayer.

**STATEMENT OF FACTS**

The taxpayer, an Indiana company, receives bottles of flavored beverages from bottling companies and repackages the bottles into multi-flavor packs. The multi-flavor packs are then wrapped and prepared for shipment back to the bottling companies or to retail outlets. At all times, the bottles remain the property of the bottling companies. At no time does the taxpayer add any contents to the bottles. The taxpayer also provides warehousing, distribution, and record keeping services.

On February 5, 1998, a sales and use tax audit was completed for the 1996 tax year. The auditor assessed use tax on the taxpayer's purchases of various packaging materials such as stretch film, hot melt, cardboard trays, bale ties, staples, and pallets. The auditor also assessed use tax on electrical work performed for the taxpayer.

## **I. Use Tax – Imposition**

### **DISCUSSION**

The taxpayer argues that it is an industrial processor, not a service provider. According to the taxpayer, the repackaging of beverage bottles into multi-flavor packs is an extension of the production process begun by the bottling companies. The taxpayer maintains that it is altering the product to its completed form and that its purchases of packaging materials should be exempt from use tax because the materials are incorporated into the production process.

Indiana imposes an excise tax, known as the use tax, "on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction . . . ." Ind. Code § 6-2.5-3-2. The taxpayer acquires the packaging materials from its suppliers in a retail transaction and, therefore, the purchases would be subject to use tax. Indiana law does, however, provide exemptions to sales and use tax under certain conditions. There is a specific provision concerning the purchase of wrapping material. Ind. Code § 6-2.5-5-9(d) states: "[s]ales of wrapping material and empty containers are exempt from the state gross retail tax if the person acquiring the material or containers acquires them for use as nonreturnable packages for *selling the contents that he adds.*" (emphasis added). The taxpayer does not add any contents to the bottles that it repackages for the bottling companies. Nor does the taxpayer sell the contents since ownership of the bottles and their contents remains at all times with the bottling companies. In a similar case, the Indiana Tax Court found that packaging another company's products was not the production of tangible goods, and thus, did not qualify for an exemption on the purchase of packaging materials. Faris Mailing, Inc. v. Indiana Department of State Revenue, 512 N.E.2d 480, 483 (Ind. Tax Ct. 1987). *See also* Indianapolis Fruit Co. v. Department of State Revenue, 691 N.E.2d 1379, 1386 (Ind. Tax Ct. 1998) (holding that when no production precedes packaging, the purchase of packaging material is not entitled to an exemption). The taxpayer does not qualify for a use tax exemption for its purchases of packaging materials.

### **FINDING**

The taxpayer's protest is denied.

## **II. Use Tax – Imposition**

### **DISCUSSION**

In its original protest letter, the taxpayer protested the imposition of use tax on the amount paid for electrical work. The price charged for the electrical work was not divided into an amount

2.5-3-3. The price charged for the electrical work done for the taxpayer was listed as a unitary transaction, therefore, the entire amount is subject to use tax.

**FINDING**

The taxpayer's protest is denied.

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